

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  RULE WAIVERS	DOCKET NO. RMU-00-1
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**ORDER COMMENCING RULE MAKING**

(Issued January 18, 2000)

Pursuant to the authority of IOWA CODE §§ 17A.4, 474.5, 476.1, and 476.2(1) (1999), the Utilities Board proposes to adopt the rules attached hereto and incorporated by reference. These rules rescind the former 199 IOWA ADMIN. CODE 1.3 (1999), and adopt a new 199 IOWA ADMIN. CODE 1.3 (1999); and adopt a new subrule 199 IOWA ADMIN. CODE 2.2(17). The reasons for proposing this amendment are set forth in the attached notice of intended action.

**IT IS THEREFORE ORDERED:**

1. A rule making proceeding, identified as Docket No. RMU-00-1, is commenced for purposes of receiving comments upon the proposed rules attached to this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 18<sup>th</sup> day of January, 2000.

**UTILITIES DIVISION [199]**  
**Notice of Intended Action**

Pursuant to Iowa Code sections 17A.4, 474.5, 476.1, and 476.2(1) (1999), the Utilities Board (Board) gives notice that on January 18, 2000, the Board issued an order in Docket No. RMU-00-1, In re: Rule Waivers. The Board is proposing to rescind current 199 IAC 1.3 and replace it with a new rule 1.3. The Board is also proposing to add a new subrule 199 IAC 2.2(17). 199 IAC 1.3 is the Board's current waiver rule.

The Board's proposed new waiver rule is intended to improve its existing waiver rule by implementation of changes in Governor Vilsack's Executive Order 11, issued September 14, 1999, which requires each agency to initiate rule-making proceedings to adopt the uniform waiver rule contained in the executive order.

The Board has had a waiver rule, which has functioned well for many years. The Board has issued many waivers pursuant to the rule currently in effect. The Board has successfully handled hundreds of waivers between 1988 and 1998. Most waiver requests were granted, and the Board issued some waivers without request when it was appropriate. Therefore, the Board wants to ensure that any modifications to the current rule improve it. The Board has tried to make the new rule as simple as possible, both in language and function.

The uniform rule in the executive order contains many useful sections, which the Board is proposing to incorporate. It also contains sections which are not applicable to the Board's process and are unnecessary. The Board has modified or eliminated those sections.

The uniform waiver rule contains standards which an agency must use when deciding whether it may or must grant a waiver request. The Board believes it would be useful to add these standards to its waiver rule. However, the language has been simplified and modified to reflect several differences specific to the Board. First, requests for waivers before the Board are not usually made by a separate petition. Requests are most often made in another pleading in an already existing docket. In addition, the requesting party may not always be the person who benefits from the waiver. For example, a utility company may request a waiver to benefit a class of customers. The uniform rule has been modified to reflect these differences.

In addition, with respect to the mandatory waiver requirement in uniform rule section II.B, the Board believes that any requestor who is able to meet the standard in section II.B would also be able to satisfy the three criteria in II.A. Therefore, the Board believes II.B is superfluous, and is not proposing to include it. In addition, the Board believes waiver of its rules should be discretionary and not mandatory. Section II.B has not been included in the proposed rule.

Paragraph II.C of the uniform rule is always true, and does not need to be stated in the rule. Paragraphs II.D and II.E are not needed.

Section III of the uniform rule contains procedures for granting waivers. The Board has included parts of this section in its proposed waiver rule, and in the proposed new waiver request form. The section was modified in several respects. The language was simplified wherever possible. In most cases, a waiver request will be made in another pleading in an already existing docket. There is normally no separate proceeding regarding the waiver request. For this reason, the Board will

already have much of the information, and it does not need to be stated in the rule or in the waiver request. The Board does not need some of the information contained in the uniform rule to evaluate the request. The Board recognizes there may be instances where persons requesting a waiver may be unfamiliar with the Board's processes, or may wish to initiate a waiver request in a separate proceeding. For this reason, the Board proposes to offer requestors a choice of using the waiver request form in new subrule 199 IAC 2.2(17), or of submitting their request as a part of another pleading, as has been done most often in the past.

Section III has also been modified to reflect that notice of any waiver request or order granting or denying a waiver request will have already been given to other parties in the docket. It is inherent in the Board's authority to be able to request additional information, and this does not need to be stated in the rule. In addition, the Board publishes a weekly list of all orders issued by the Board and all filings made by parties. This list is provided to subscribers who include utility companies, the Office of Consumer Advocate, Division of the Department of Justice, and any others who have requested it. The list is also published on the Board's website. Therefore, anyone who wishes to know whether any waiver requests have been filed or any orders granting or denying a waiver request issued may obtain the information easily and quickly. The Board has never had a problem in the past with implementation of its waiver rule.

Paragraph III.E requires orders granting waivers to describe the precise scope and operative period of the waiver. This is included in the Board's proposed rule. The remainder of paragraph III.E is not needed, as waiver requests are always

granted or denied by written Board order, and there has never been a problem with timeliness of issuance. Paragraph III.F is not needed, because Board orders are always sent to the petitioner and all other parties in the docket. The Board will comply with paragraph III.G, but it is not necessary that this be stated in the rule. Paragraphs III.H and III.I are not needed to be stated in the rule.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b", any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before February 29, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

If requested pursuant to Iowa Code section 17A.4(1)"b", or on its own motion after reviewing the statements, the Board will determine whether an opportunity for oral presentation should be provided.

These rules are intended to implement Iowa Code chapters 17A, 474, and 476.

The following rules are proposed.

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Item 1. Rescind 199 IAC 1.3 and adopt the following new rule in lieu thereof:

**199—1.3(17A, 474, 476) Waivers.** In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds that:

1. Application of the rule would result in hardship or injustice; and
2. The waiver would be consistent with the public interest; and
3. The waiver would not prejudice the substantial legal rights of any person.

A waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199 IAC 2.2(17), or may submit their request as a part of another pleading.

The waiver shall describe its precise scope and operative period. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

This rule is intended to implement Iowa Code sections 17A.4, 474.5, 476.1, and 476.2(1).

Item 2. Add the following new subrule 199—2.2(17) to rule 199—2.2:

**2.2(17)** *Waiver request.*

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

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(insert case title)

DOCKET NO. (insert docket no.)

WAIVER REQUEST

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COMES NOW (insert name of person requesting the waiver), and files this request for a waiver, and in support states:

1. A citation to the specific rule the requester wants to be waived.
2. The scope and operative period of the waiver.
3. The requester must show that under the circumstances described in this paragraph: a) application of the rule would result in hardship or injustice; and b) the

waiver would be consistent with the public interest; and c) the waiver would not prejudice the substantial legal rights of any person.

4. Persons who may be adversely impacted by the grant of the waiver, if known.

WHEREFORE, (insert name of requester) prays the board grant the request for a waiver of the rule specified above.

Respectfully submitted,

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(signature of requester)  
(name)  
(address and zip code)

This rule is intended to implement Iowa Code sections 17A.4, 474.5, 476.1, and 476.2(1).

January 18, 2000  
/s/ Allan T. Thoms  
Allan T. Thoms  
Chairperson